

C O P Y

In Opinion

417 A

February 19, 1957

The Honorable Erastus C. Ferguson
President of the Senate
Senate Chamber
State House
Concord, New Hampshire

Dear Senator Ferguson:

In a conference yesterday you pointed out that Governor Dwinell expects to be out of the state for a period of several days - during which the General Court will be in session - and you inquired what arrangements ought to be made with respect to presiding over the Senate during such period.

While the Governor is absent you expect, conformably with Part II, Article 49 of the Constitution to exercise the powers of the Governor; and the question which is under consideration arises because of that provision of the Article cited which prohibits the President holding his office in the Senate during the time he is serving in the place of the Governor.

Upon a consideration of all of the relevant factors, we are of the opinion that a President pro tempore ought to be elected by the Senate to preside over that body during the time you will be occupying the Governor's chair under the present circumstances.

Your attention is invited to Rule 21 of the Rules of the Senate which reads, in part, as follows:

"The President may at any time name any member to perform the duties of the chair; but such substitution shall not extend beyond one legislative day."

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Under this Rule the President may make provision for the chair of the Senate when he expects to exercise the powers of the Governor for one day only. But the Rule above quoted contains its own limitation; the power to appoint a substitute to preside does not extend beyond the end of the legislative day upon which his substitution becomes effective. It is noted that the duration of appointment so provided is common among legislative assemblies.

Cushing in his "Law and Practice of Legislative Assemblies" in section 313 notes the power of a presiding officer even apart from formal rule, to substitute some other member to perform the duties of the chair in his place, such substitution to be limited to the "then present sitting."

Since the power of the President to appoint a substitute does not extend beyond the close of the next legislative day, provision for a longer period must be made by the Senate itself through the election of a President pro tempore. This it may do under the authority granted it in Const., Part II, Art. 37, to appoint "other officers." See Op. of Justices, 87 N.H. 489.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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